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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

9 || In re

10 | SEQUOIA SENIOR SOLUTIONS, INC.,

No. 16-11036

Debtor(s).

12 Memorandum on Motion to Exunge Class Claim

14 Chapter 11 debtor Sequoia Senior Solutions, Inc., is in the business of supplying care giver
15 services to elderly, disabled or infirm clients. Prior to its Chapter 11 filing, it was the defendant in
16 a class action pending in state court. The complaint in that action alleged that Sequoia had a practice
17 and policy of not paying its care-giver employees for time designated as “sleepetime” hours in
18 violation of the California Labor Code, and that Sequoia failed to pay its employees proper
19 overtime as required by recent California law.

20 This Chapter 11 appears to be a direct result of the state court action. Sequoia listed each
21 employee who might be a member of the class as a creditor with a zero amount stated for the claim.
22 None of the individuals filed claims, but Claim # 8 was filed as a class claim on behalf named claimant
23 Scott Russell and the same putative class.

24 The putative class took no action in the case beyond filing the claim until Sequoia's plan came
25 up for confirmation. It filed an objection, but never filed a motion to make Rule 7023 of the Federal
26 Rules of Bankruptcy Procedure applicable to its claim, nor did it take any action to vote on the plan or

1 to have the claim estimated for voting purposes. The court overruled the objection, finding that the
2 plan meets the requirements of law for confirmation. The plan provides for a fund of about
3 \$150,000.00 to be shared by allowed unsecured claims. The issue now is whether the class claim
4 should share in this fund or whether it should be expunged so that the class representative is the only
5 employee paid anything on account of the alleged Labor Code violations.

6 The court begins its analysis by finding unpersuasive Sequoia's argument that the class claim
7 should be expunged because all of the potential members of the class were given notice of the
8 bankruptcy and none chose to file a proof of claim. While class actions can at times result in abuses,
9 the court here sees only a legitimate purpose to proceeding as a class on behalf of low-paid workers
10 who individually may not realize that they have a claim and might not have the ability to articulate a
11 claim even if told they have one.

12 Moreover, since the court has confirmed Sequoia's plan its total liability is capped at the
13 amount it proposes to pay to unsecured creditors, regardless of the allowed amount of all claims.
14 There is no longer a risk, as threatened by Sequoia in its disclosure statement, that "The projected legal
15 and related cost of defense of the alleged class claim would, even if the Debtor prevailed on every
16 issue, require the Debtor to liquidate and cease operation."

17 There is no dispute that the class claimant had never taken any action to make Rule 7023
18 applicable to the class claim when Sequoia made its motion to expunge the claim. The first mention of
19 such action is contained in the opposition to the motion to expunge: "Now that the Debtor moved to
20 expunge Russell's class proof of claim, a contested matter has arisen, and Russell invokes Rule 9014
21 and moves for class certification under Rule 7023 for the remaining claims." The fundamental issue
22 for the court to decide now is whether this request is timely, or whether Sequoia is correct in its
23 assertion that "Federal Rules of Bankruptcy Procedure require that applicability of Rule 7023 must be
24 determined prior to filing the Class POC."

25 While there is authority to the contrary, the court believes that in the absence of controlling
26 Ninth Circuit authority it should follow the Eleventh Circuit's decision in *In re Charter Co.*, 876 F.2d

1 866, 874 (11th Cir. 1989). In that case, the court held that where a putative class claim has been filed
2 before the claims bar date the motion to invoke is timely if promptly made once an objection to the
3 claim is raised. The court finds no inconsistency between *Charter Co.* and either *Reid v. White Motor*
4 *Corp.*, 886 F.2d 1462, 1471n13 (6th Cir.1989) [the only other circuit-level published decision on the
5 issue] or this court's decision in *In re Aughney* , 2011 WL 479010 (Bankr.N.D.Cal. 2011), aff'd sub
6 nom. *Mortland v. Aughney*, 2011 WL 2653515 (N.D.Cal. 2011). In the former case, the motion to
7 apply Rule 7023 was not made until well after the claim had been disallowed. In the latter, the motion
8 was never made at all.

9 Having determined that the request to invoke Rule 7023 is timely, the issue becomes whether
10 the court should exercise its discretion to allow the claim to proceed as a class claim. The court
11 recognizes that members of an uncertified class who received actual notice of the bar date but did not
12 file timely claims are the least favored candidates for class action treatment. *In re Musicland Holding*
13 *Corp.*, 362 B.R. 644, 655 (Bkrtcy.S.D.N.Y. 2007). The court would certainly have held that the
14 disruption to the reorganization process would have been too great to permit the class claim to vote on
15 the plan. However, having denied the belated attempt of the putative class to cast a late ballot and
16 having confirmed the plan, the only remaining issue for the court is whether the class, if it can be
17 certified and has a meritorious claim, should share in the pot created by the plan. For this purpose
18 *only*, the court sees no reason why the claim should not proceed as a class claim. Sequoia is not
19 exposed to any greater liability than provided for in its plan, and will not be permitted to use the
20 Chapter 11 process to entirely avoid its responsibility to pay its employees according to law.

21 For the foregoing reasons, the court construes the opposition to Sequoia's motion to expunge
22 the class claim as a countermotion to make Rule 7023 applicable. The court will accordingly deny the
23 motion to expunge and grant the countermotion to apply Rule 7023, provided that such motion is
24 granted for the purpose of sharing in the pot created by the plan for unsecured creditors and no other
25 purpose. The court at this time makes no ruling regarding certification of the class or the merits of the
26 claim, and holds only that the request to apply Rule 7023 is timely and that the equities of the case

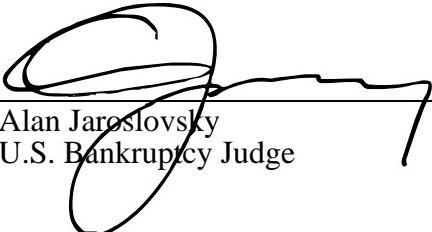
1 militate in favor of allowing the claim to be asserted on behalf of employees if the other legal
2 requirements can be met.

3 Counsel for the putative class shall submit a form of order consistent with this decision which
4 counsel for Sequoia has approved as to form.

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6 Dated: June 9, 2017

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Alan Jaroslovsky
U.S. Bankruptcy Judge